

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

KUMAR NAHARAJA

Plaintiff-Appellant, an individual, in Pro-per

v.

NATIONAL LABOR RELATIONS BOARD, et al

Former General Counsel **Richard F. Griffin Jr.**

Executive Secretary **Gary Shinnars,**

Former Solicitor General William B. Cowen,

Defendants,

*(Federal Board/Agency, and three individual
Officers of NLRB in their individual & official
capacities)*

Defendants-Appellees

CASE: 17-5107

D.D.C. No. 1:16-cv-24 BAH

FED. R. APP. P. 2

D.C. Cir. R. 35 (a)

D.C. RPC Rule 3.1

D.C. RPC Rule 3.3

**PL.-APPELLANT'S OBJECTION TO DEFENDANT'S
MAY 24, 2018 RESPONSE IN OPPOSITION**

1.

For Pl.-Appellant's reply objecting to defendants' May 24, 2018 response in opposition, Pl-Appellant relies on all of the pleadings, papers, and other records on file in this action, and whatever argument and evidence that may be heard at any hearing on Pl-Appellant's Motions.

§. I. DEFENDANTS RESPONSE IN OPPOSITION IS FRIVOLOUS &
VIOLATES D.C. RPC RULE 3.1(*Meritorious Claims and Contentions*)

2.

Defendants' counsel Portia Gant and the supervisory trial attorney for defendants Diana O. Embree *et al* have filed a FRIVOLOUS RESPONSE in opposition to Pl-Appellant seeking disability accommodation and for the GOOD CAUSE & COMPELLING CIRCUMSTANCES set forth in the Pl-Appellant's May 21, 2018 motion. *See* Pl-Appellant's MOET Pet. For Recon., or Other Mot., Sec. IV, Mem. Supp. ¶¶ 1-5, *at* 3-7, ECF No. 1732054, Case No. 17-1507 (D.C. Cir., May 21, 2018)

3.

To further mislead the court, defendants construe of their own accord that Pl-Appellant's "Other Motion" as noted in the Title/Caption of Pl-Appellant's May 21, 2018 Motion is a motion to extend the time for filing a petition for panel hearing. *See* Def.'s Opp'n., n.1. *at* 1, ECF No. 1732682, Case No. 17-5107 (D.C. Cir., May 24, 2018)

4.

D.C Rules of Professional Conduct (RPC): Rule 3.1 (*Meritorious Claims and Contentions*) provides that—

“[a] lawyer shall not bring or defend a proceeding, or assert or

controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law

5.

The American Bar Association (ABA) Model Rules of Professional Conduct Rule 3.1 has set forth the standard that makes no reference to a lawyer's state of mind and requires only that the lawyer's position have a basis in "law and fact . . . that is not frivolous."

- a) Pl-Appellant who has been recuperating from a disability had set forth in the May 21, 2018 Motion for Extension of time (MOET) in a clear and concise manner the facts related to the disability with supporting evidence which a prudent lawyer should reasonably have known by perusing Pl-Appellant's motion. *See* Pl-Appellant's MOET Pet. for Recon., or Other Mot., Ex. A, ECF No. 1732054, Case No. 17-1507 (D.C. Cir., May 21, 2018) (Ex. A: Letter dated Mar. 21, 2018 from Matthew Hansen, MD, Emergency Department, Oregon Health & Science University (OHSU) stating that Kumar Naharaja, MD is a patient at the Oregon Health & Science University and that "[p]atient does not have use of his right hand for activities of daily living due to XXX(Redacted)XX problem. He is anticipated to have this disability for at least 2 months.")

D.C. RPC (1)(k) defining "Reasonably should know" provides that—

“when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

b) WHEREAS, AS IN HERE, in their May 24, 2018 response in opposition, defendants’ counsel Portia Gant and the supervisory trial attorney for defendants Diana O. Embree *et al*, willfully and knowingly have moved this court to VIOLATE federal and state laws that prohibit discrimination of qualified individuals with a disability.

6.

Federal statutory law and/or state law requires courts to comply with the statutory provisions of 42 U.S. Code § 12132, or applicable state law provisions that prohibit discrimination of qualified individuals with a disability, notwithstanding a party’s objection. *See* 42 U.S. Code § 12132.

§. II. DEFENDANTS RESPONSE IN OPPOSITION IS FRIVOLOUS & VIOLATES D.C. RPC RULE 3.3 (*Candor towards Tribunal*).

7.

D.C Rules of Professional Conduct (RPC): Rule 3.3 (*Candor towards Tribunal*), in part, provides that—

(a) A lawyer shall not knowingly:

(1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer, unless correction would require disclosure of information that is prohibited by Rule 1.6;

(2) Counsel or assist a client to engage in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning, or application of the law;

(3) Fail to disclose to the tribunal legal authority in the controlling jurisdiction not disclosed by opposing counsel and known to the lawyer to be dispositive of a question at issue and directly adverse to the position of the client; or . . .”

8.

Defendants’ counsel Portia Gant and the supervisory trial attorney for defendants Diana O. Embree *et al* allude to extensions of time sought by Plaintiff-Appellant and covertly state that Pl-Appellant had “essentially the same excuses to continually extend his time to prosecute this case” but FAIL TO DISCLOSE their FRAUDULENT CONDUCT that helped secure the Feb. 1, 2017 order that denied Pl-Appellant’s FRAP (4)(a)(4)(A) Motion for Relief.

- a) Briefly, Plaintiff was informed by the NLRB FOIA Office on or around Nov. 22, 2016 that the FOIA documents pertaining to this case and which were material to the outcome of this case in the district court would be forwarded via Expedited Processing to Plaintiff.

b) The FOIA documents that were granted “Expedited Processing” were then intentionally withheld by defendants until around 9-10 days after the time to file the FRAP (4)(a)(4)(A) Mot. Relief expired and were made UNAVAILABLE to Plaintiff-Appellant so that Pl-Appellant’s FRAP (4)(a)(4)(A) Mot. Relief could be readily denied by the Honorable Chief Judge Beryl Howell, an adjunct professor in Legal Ethics at American University’s Washington College of Law, who presided over this case and coerced the case disposition in the district court. *See* Order Dec. 21, 2016 (dismissing this case when discovery was in progress and in the face of the timely filed Dec. 13, 2016 *Plaintiff’s Renewed Fed. R. Civ. P. Rule 56 (d)(2) Motion with Supporting Memorandum and Affidavit* towards Continuance to Secure Evidence).

c) Notwithstanding the above, yet another supplementary FOIA request filed by Pl-Appellant in 2017 directly with the NLRB FOIA Branch’s attorney in charge of processing the FOIA requests is still PENDING as of this date.

9.

WHEREFORE, for all the reasons set forth above AND for ALL of the compelling reasons, continuing circumstances of extra-ordinary hardship faced by Plaintiff-

Appellant due to no fault of Appellant's own, and the GOOD CAUSE set forth in Plaintiff-Appellant's May 21, 2018, Pl-Appellant respectfully moves this court to GRANT the Motion for Extension of Time UNTIL and including **July 20, 2018** to file the Petition for Reconsideration, or other Motion.

Respectfully submitted,

Dated: May 28, 2018



KUMAR NAHARAJA

(Pl-Appellant in Pro-per)

PGY-2 Resident Physician¹
Pediatric Neurology Residency Program
Doernbecher Children's Hospital
OHSU School of Medicine, Portland, OR 97239

Mailing address-
930 NW 25TH PL APT 402
PORTLAND, OR 97210-2875
Phone: 612.987.6782

¹ Petitioner's Graduate Medical Education & employment was unlawfully, with a criminal intent disrupted & terminated on 08/30/2013 through criminal RICO offenses perpetrated by an organized pattern of racketeering activity as that term is defined by 18 U.S.C. § 1961 (5) with fraudulently concealed criminal motives and perpetrated by 18 supervisors &/or administrators at OHSU School of Medicine, Portland, OR. See 18 U.S.C. § 1962 (c) & (d). See City of Portland, Portland Police Bureau's [PPB] Police Report, PPB Case No.14-84393. In *United States v. Benton*, the Fifth Circuit defined motive as "the reason that nudges the will and prods the mind to indulge the criminal intent." 637 F.2d 1052, 1056-57 (5th Cir. 1981). See Am. Compl. at 1-3, n.1 & n.2, ECF No. 11, at 1-3, No.1:16-cv-24 BAH, (D.D.C., Feb. 25, 2016).

(I). CERTIFICATE OF SERVICE

I certify that on May 28, 2018, I filed a copy of this motion *via* Appellate CM/ECF. Pursuant to FRAP 25(c)(2), the court's transmission equipment makes electronic service of this motion on defendants' counsel whose names are set forth below AND satisfies the service requirement of Cir. R. 25(a).

Diana Orantes Embree & Portia Gant
Counsel for defendants
National Labor Relations Board
1015 Half Street, SE Fourth Floor, Washington DC 20570
via NDA-Appellate CM/ECF

Respectfully submitted,

Dated: May 28, 2018



KUMAR NAHARAJA
(*Pl-Appellant in Pro-per*)

PGY-2 Resident Physician¹
Pediatric Neurology Residency Program
Doernbecher Children's Hospital
OHSU School of Medicine, Portland, OR 97239

Mailing address-
930 NW 25TH PL APT 402
PORTLAND, OR 97210-2875
Phone: 612.987.6782

¹ See n.1 at 7, *supra*